Office - Supreme Court, U.S.
FILED
JAN 16 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-849

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, PETITIONER

v.

SERGIO ELEJAR MENDOZA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Cases:	Page
Automobile Club v. *Commissioner*, 352 U.S. 180	10
Barrett v. *United States*, 423 U.S. 212	10
Barretto v. *United States*, Pet. No. 248806-WWS (N.D. Cal. Aug. 15, 1980), rev'd, Nos. 80-4441, 80-4543 & 80-5427 (9th Cir. Dec. 10, 1982)	3
Barretto v. *United States*, No. 80-4441, 80-4543 & 80-5427 (9th Cir. Dec. 10, 1982)	1, 2, 3, 6, 7, 8
Federated Department Stores v. *Moitie*, 452 U.S. 394	9
Hickman v. *Taylor*, 329 U.S. 495	10
Litonjua v. *INS*, Pet. No. 23358-GT (S.D. Cal. Apr. 8, 1981), rev'd, Nos. 80-4441, 80-4543 & 80-5427 (9th Cir. Dec. 10, 1982)	3, 4
Montana v. *United States*, 440 U.S. 147	8, 9
NLRB v. *Iron Workers*, 434 U.S. 335	10
Naturalization of 68 Filipino War Veterans, In re, 406 F. Supp. 931	2, 4, 5, 6, 7, 8, 9, 10
Olegario v. *United States*, 629 F.2d 204, cert. denied, 450 U.S. 980	3, 5, 6
Pangilinan v. *INS*, Pet. No. 251849-WWS (N.D. Cal. Sept. 24, 1980), rev'd, Nos. 80-4441, 80-4543 & 80-5427 (9th Cir. Dec. 10, 1982)	2, 3, 4
Parklane Hosiery v. *Shore*, 439 U.S. 322	5, 6
United States v. *Valenzuela-Bernal*, No. 81-450 (July 2, 1982)	8

Statutes and rules: Page

Nationality Act of 1940, 8 U.S.C. (1940 ed. Supp. V 1945) 501 *et seq.*:
Sections 701-705, 8 U.S.C. (1940 ed. Supp. V 1945) 1001-1005 2
Section 702, 8 U.S.C. (1940 ed. Supp. V 1945) 1002 ..... 2, 3
5 U.S.C. 552(b)(5) 10
Fed. R. Civ. P. 26(b)(3) 10
Sup. Ct. R. 22.6 1

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-849

UNITED STATES OF AMERICA, PETITIONER

v.

SERGIO ELEJAR MENDOZA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

Respondent has raised several points in opposition to our petition that warrant response. Primarily, however, this is a supplemental brief, filed pursuant to Rule 22.6 of the Rules of this Court, intended to direct the Court's attention to the recent decision of the United States Court of Appeals for the Ninth Circuit in *Barretto* v. *United States*, Nos. 80-4441, 80-4543 & 80-5427 (Dec. 10, 1982). As explained in the first section of this brief, that decision, a copy of which is reproduced as an appendix hereto, significantly extends the objectionable holding of the court of appeals in the instant case, and underscores the need for further review. Our reply to the brief in opposition follows discussion of *Barretto*.

A

1. a. In *Barretto* the court of appeals considered the naturalization applications of 16 Filipino war veterans.[1] These applications, like respondent Mendoza's, were predicated on Sections 701-705 of the Nationality Act of 1940, 8 U.S.C. (1940 ed. Supp. V 1945) 1001-1005. Like respondent, the petitioners for naturalization in *Barretto* claimed that they were denied due process of law by the Attorney General's removal of Section 702 overseas naturalization authority from the American vice-consul stationed in Manila for a portion of 1945 and 1946. And like respondent, they contended that the United States is collaterally estopped by the unappealed judgment in *In re Naturalization of 68 Filipino War Veterans*, 406 F. Supp. 931 (N.D. Cal. 1975) ("*68 Filipinos*") from denying their naturalization petitions.

None of the naturalization petitioners claimed to have made any effort to secure naturalization under Section 702 in the Philippines. Thus, like respondent, none of the petitioners qualified as "Category I" veterans—that class of individuals whose naturalization applications the Attorney General has decided not to oppose (see Pet. 9, 12). Moreover, 15 of the petitioners filed their naturalization applications after the United States withdrew its appeal in *68 Filipinos*, and, like respondent, were accordingly unable to avail themselves of the "grandfather rule" applied by the Solicitor General in cases arising from petitions filed before that date (see Pet. 12 n.12).

The remaining petitioner, Barretto, did file his naturalization petition prior to withdrawal of the appeal in *68 Filipinos*. His naturalization petition was nevertheless opposed because he spent the period February

[1] One of the cases consolidated in *Barretto*, *Pangilinan* v. *INS*, Pet. No. 251849-WWS (N.D. Cal. Sept. 24, 1980), involved the claims of 14 Filipino veterans.

1945 through June 10, 1946, in the United States, undergoing flight training, and because he actually filed a preliminary application for naturalization under the 1940 Act while in the United States. That application had evidently been rejected because it lacked the necessary signature of his commanding officer. Twenty days after his return to the Philippines, Barretto was discharged from the United States' armed forces and became ineligible for overseas naturalization under Section 702 of the 1940 Nationality Act. He thus was stationed in the Philippines for only 20 days when naturalization there under Section 702 was impossible because of the absence of a naturalization official.

b. Each of the naturalization claims was denied by the district court. In *Pangilinan* v. *INS*, Pet. No. 251849-WWS (N.D. Cal. Sept. 24, 1980), and *Litonjua* v. *INS*, Pet. No. 23358-GT (S.D. Cal. Apr. 8, 1981), the district courts, following the Second Circuit's decision in *Olegario* v. *United States*, 629 F.2d 204 (1980), cert. denied, 450 U.S. 980 (1981), rejected the collateral estoppel argument and denied the petitions on the merits. In *Barretto* v. *United States*, Pet. No. 248806-WWS (N.D. Cal. Aug. 15, 1980), the district court concluded that the petitioner could not claim any injury from the course of the government's administration of Section 702 in the Philippines, because he had been in the United States for almost all of the time during which a naturalization officer was absent from the Philippines, and had not sought naturalization during the 20 days after his return from the United States while he was still eligible for naturalization under Section 702.

2. Each petitioner appealed from the denial of his naturalization petition. While these appeals were pending, the court of appeals rendered its decision in the instant case. Shortly thereafter, relying upon its *Mendoza* decision, the court of appeals reversed the district

courts' judgments, and granted each naturalization petition.

a. The court of appeals concluded that the petitioners in *Pangilinan* and *Litonjua* were situated identically to respondent Mendoza (App., *infra*, 4a-5a). Rejecting the government's arguments against application of collateral estoppel for the reasons stated in the instant case (*id.* at 5a-8a), the court "readily agree[d] that the constitutional issues raised in *68 Filipinos* are significant" but commented that "the government overstates the precedential value of *68 Filipinos*, which is, after all, a district court opinion rendered on extraordinary facts" (*id.* at 8a, 9a). The court doubted that analogous litigation would arise in the future and observed that if future litigation (not controlled by *Mendoza* and *68 Filipinos*) were to arise,

> since the Second Circuit has declined to collaterally estop the government, and has disagreed with *68 Filipinos* on the merits, *Olegario v. United States*, 629 F.2d 204, 214-215 (2d Cir. 1980), *cert. denied*, 450 U.S. 980 (1981), there is a conflict in the circuits and the courts addressing analogous legal issues or new facts will have the benefit of both opinions. [App., *infra*, 9a & n.8.]

Stressing the importance of the "principles of consistency and fairness that underlie the doctrine of *stare decisis*" (*id.* at 9a-10a), the court of appeals concluded that *Mendoza* was controlling.

b. Turning to Barretto's petition, the court of appeals held that his situation was indistinguishable from that of other Category II veterans who filed their petitions in time to avail themselves of the "grandfather rule," and that *Mendoza* in any event required that Barretto's petition be granted (App., *infra*, 10a-13a). The court explained (*id.* at 12a; emphasis added):

> In *Mendoza* we found that Dr. Mendoza's presence in the Philippines for as much as three months, after having been in the United States for several

months, was sufficient to implicate Dr. Mendoza's due process rights, 672 F.2d at 1326 n.8; we know of no principled basis—and the government offers none—for drawing a line between three months in Dr. Mendoza's case and three weeks in this case. *If the government's conduct violated the constitutional rights of Filipinos serving in the United States armed forces in the Philippines, it violated their rights whether they were in the Philippines for nine months or nine days.*

3. The opinion of the court of appeals in *Barretto* serves to highlight the destructive effect of its *Mendoza* decision upon the heretofore accepted practice of development of the public law through appeals and the resolution of conflicts between the courts of appeals by this Court. It also highlights the tension between the decision in this case and this Court's decision in *Parklane Hosiery* v. *Shore*, 439 U.S. 322 (1979). Even though the district courts in *Barretto* found that the petitioners were not entitled to naturalization, the court of appeals ordered that that benefit must be granted because the United States, five years earlier, did not appeal a district court decision raising the same legal issue.

a. Paradoxically, the court of appeals freely acknowledged (App., *infra*, 8a) that the underlying constitutional issue in this case is significant, but contented itself with the observation that *68 Filipinos* was, after all, only a district court opinion. But it is not the United States that "overstates the precedential value of *68 Filipinos*" (*id.* at 9a), it is the decision of the court of appeals that improperly *elevates* the decision of the district court in *68 Filipinos* into a decision of a court of appeals. As the court of appeals put it, *68 Filipinos* coupled with *Mendoza*, and *Olegario*, together create a "conflict in the circuits" (*id.* at 9a n.8). It is thus difficult to understand why the court of appeals was not itself required, in this case, to redetermine the underly-

ing question of constitutional law in light of the persuasive force of both *Olegario* and *68 Filipinos*, just as it suggested in *Barretto* that other courts should do in subsequent cases (see App. *infra*, 9a n.8; see page 4, *supra*).

Similarly, while stressing the value of *stare decisis* and the need for uniformity of result in Filipino veterans cases, the court of appeals ignored the lack of uniformity produced by its own refusal to reconsider in *Mendoza* the constitutional question decided by the district court in *68 Filipinos* in light of the intervening conflicting decision of the Second Circuit in *Olegario*. More generally, in *Mendoza* and *Barretto* the court of appeals lost sight of the fact that the best way to ensure uniformity of result in adjudicating the claims of similarly situated individuals, absent considerations of *stare decisis* or a controlling precedent of a higher court, is for every court to render the decision it determines to be correct on the merits. The availability of rights of appeal, and of review by this Court in a proper case, then provides the most effective means of ensuring that each claimant is accorded its rights, without creating an undue risk of insulating erroneous legal rulings from review or encouraging uncritical government appeals.

b. In *Barretto*, the court of appeals invoked collateral estoppel to foreclose determination of the merits of the underlying constitutional issue even though, at the time the district courts had ruled on the petitions of Litonjua and Pangilinan, the Second Circuit's decision in *Olegario* created a precedent in conflict with *68 Filipinos*.[2] Thus, even assuming that, contrary to our main submission, *Parklane Hosiery* v. *Shore*, *supra*, is con-

---

[2] *Olegario* had not been decided when the district court ruled in the present case (see Pet. App. 16a n.13), although it was decided prior to the time the court of appeals rendered its decision.

trolling in the circumstances of these cases, invocation of collateral estoppel was plainly inappropriate. See 439 U.S. at 330 & n.14. Indeed, the court of appeals refused to hold that the district courts' rejection of collateral estoppel was erroneous (App., *infra*, 10a n.8). Instead, the *Barretto* court, quite properly concerned about uniformity of result between this case and *Barretto*, simply invoked *stare decisis*, remarking cryptically that "in light of *Mendoza*, the government is now estopped as a matter of law" (*ibid*).

The dilemma faced by the court of appeals in *Barretto* was of its own devising. Because the claim presented in this case arises under a scheme of public law applicable to a class of persons, it was foreseeable (if not inevitable) when the court decided this case that a case such as *Barretto* would arise. Rather than employing *stare decisis* to extend the troublesome holding of *Mendoza* to cover circumstances where the application of collateral estoppel was properly rejected by the district court, the court of appeals should have recognized that the very policies of "consistency and fairness" it invoked in *Barretto* required it to reach the merits in the present case, rather than relying upon the artifice of collateral estoppel.

c. The court of appeals' holding that naturalization petitioner Barretto is not situated differently from respondent Mendoza, or from Pangilinan, Litonjua or any of the Category II veterans in *68 Filipinos*, highlights the sweeping scope of the court's collateral estoppel ruling. As we explain in our petition (pages 25-26), because the *68 Filipinos* court did not consider the effect of a prolonged period of residence in the United States (where naturalization was available) during the time when naturalization was unavailable in the Philippines, even if it may be said that respondent's due process rights were "*implicate*[*d*]" in this case, as the court below thought (Pet. App. 11a n.8), it was improper to

give preclusive effect to the earlier decision as to whether respondent's due process rights were *violated*. In *Barretto*, the court of appeals extended its illogical line of reasoning to a case where the Filipino veteran was deprived of the opportunity for overseas naturalization for only 20 days, had ample opportunity for naturalization in the United States, and actually made such an application. The court of appeals' decisions thus indicate that all Filipino veterans are entitled to naturalization in the Ninth Circuit, notwithstanding the absence of prejudice in a particular case.[3] This holding squarely conflicts with this Court's teaching that a showing of prejudice is a necessary element of a due process claim. See *United States* v. *Valenzuela-Bernal*, No. 81-450 (July 2, 1982), slip op. 10.

B

1. Respondent's contention (Br. in Opp. 5-7) that our argument is inconsistent with *Montana* v. *United States*, 440 U.S. 147 (1979), is incorrect. Because of the difference between the facts of this case and those considered in *68 Filipinos* (see Pet. 25-26), this case, unlike *Montana*, plainly calls for the application of the "unmixed questions of law" exception to the doctrine of issue preclusion that was recognized there by the Court. 440 U.S. at 162-163. In addition, the holding of *Montana* is inapposite because, unlike that case, the parties to the successive actions are not the same here.

---

[3] Respondent's assurances (Br. in Opp. 12-13, 16-17) that his case is unique or nearly so is unavailing, for the decision below, especially as extended in *Barretto*, offers every Filipino War veteran who lawfully enters the United States the right to naturalization. In any event, the troubling aspect of the court of appeals' decision is not so much its impact on requests for naturalization by Filipino veterans as its wholly unprecedented application of collateral estoppel to prevent the United States from litigating an important question of constitutional law. See page 10, *infra*.

Montana's holding is also distinguishable because the doctrine applied there was, in practical effect, res judicata. The Court employed the collateral estoppel label solely because the government had undertaken the first round of litigation through a proxy. *Id.* at 154-155.

More fundamentally, the policy and practical considerations we outline in the petition (Pet. 17-22) had little application in *Montana*, for the issue presented there could arise in only two forums—the state courts in Montana and the United States District Court for Montana.[4] The issue, too, was not one involving a body of law applicable to a class of similarly situated persons, but one affecting the proprietary interest of the United States. Accordingly, the United States did not argue in *Montana*, as it does here, that the application of the preclusion doctrines was inappropriate in light of the government's special attributes and responsibilities, and the Court's opinion does not reflect any view respecting our present contentions.

2. Contrary to respondent's suggestion (Br. in Opp. 13), the government did not in any relevant sense "concede[ ] the validity of the district court's judgment" by withdrawing the appeal in *68 Filipinos*. Of course, the government thereby bound itself to comply with that judgment (see *Federated Department Stores* v. *Moitie*, 452 U.S. 394 (1981))—an obligation the government has more than fulfilled (see Pet. 12 & n.12)—but, as explained in the petition (Pet. 11, 20-21), it did not acqui-

[4] This consideration is especially significant because in *Montana*, unlike this case, the government had engaged in conduct that may implicate the core concerns underlying the preclusion doctrines. It had litigated the issue to a conclusion in the Supreme Court of Montana, noted an appeal to this Court, then dismissed the appeal and pursued its parallel action in the federal court. The federal action, moreover, had been filed just after the action in state court was filed, and had been stayed upon the government's stipulation pending resolution of the state court litigation.

esce thereby in the correctness of the district court's legal ruling. Respondent Mendoza was not a party to *68 Filipinos*. If the government had prevailed in that case (as it has prevailed in litigation involving other Filipino veterans), respondent would have been free to relitigate the legal issues in his own case. By the same token, the judgment in *68 Filipinos* did not require that the government grant respondent's petition for naturalization.

Nor is there any anomaly in the Department of Justice's reconsideration of its position on naturalization of Filipino veterans. As we explain in the petition, the present position of the United States is quite simply that *68 Filipinos* was wrongly decided; the withdrawal of the earlier appeal did not reflect any contrary view. Respondent's suggestion (Br. in Opp. 14), echoing the court of appeals (Pet. App. 12a, 13a, 15a), that the government has not justified its change in posture assumes that the United States has an obligation to justify its litigating judgments to the courts. That assumption is inconsistent with fundamental principles of our adversary system of justice, see *Hickman* v. *Taylor*, 329 U.S. 495, 510-512 (1947); cf. 5 U.S.C. 552(b)(5); Fed. R. Civ. P. 26(b)(3), and raises serious questions of separation of powers. Moreover, in noting on previous occasions that the government had altered its position on a legal issue, the Court has never suggested that such changes must be justified to the satisfaction of the courts. See, *e.g.*, *NLRB* v. *Iron Workers*, 434 U.S. 335, 350-351 (1978); *Barrett* v. *United States*, 423 U.S. 212, 222 n.6 (1976); *Automobile Club* v. *Commissioner*, 353 U.S. 180, 183 (1957).

3. Respondent suggests (Br. in Opp. 11-12, 16), finally, that we have exaggerated the impact of the decision below upon the government's prevailing practice of selective pursuit of appellate review, suggesting that the considerations we have adduced against application

of collateral estoppel would be persuasive in other kinds of cases. But neither respondent nor the court of appeals has identified any objective criterion that could guide the government in its litigating decisions in the wake of the decision below. See Pet. 23 n.22. Instead, the court of appeals arrogated to itself a standardless discretion to determine with the benefit of hindsight whether a fresh determination of a particular legal issue is in the public interest (see Pet. App. 20a).

For the foregoing reasons and the reasons stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted.

REX E. LEE
Solicitor General

JANUARY 1983

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 80-4441

D.C. NO. 248806 WWS

Re Naturalization of
RENATO LEOPOLDO BARRETTO,
PETITIONER-APPELLANT

v.

UNITED STATES OF AMERICA,
RESPONDENT-APPELLEE.

No. 80-4543

D.C. No. 251849-WWS

Re Naturalization of
ANTOLIN PUNSALAN PANGILINAN, ET AL.
PETITIONER-APPELLANTS

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT-APPELLEE.

No. 81-5427

D.C. No. 23358-GT

Re Naturalization of
MARIO VALDERRAMA LITONJUA,
PETITIONER-APPELLANT,

v.

IMMIGRATION AND NATURALIZATION SERVICE,
RESPONDENT-APPELLEE

OPINION

Appeals from the United States District Courts
for the Northern and Southern Districts of California
Honorable William W. Schwarzer,
U.S. District Judge, Presiding
Honorable Gordon Thompson, Jr.,
U.S. District Judge, Presiding

Argued and Submitted August 13, 1982

Before: SCHROEDER, FLETCHER, and NORRIS, Circuit Judges.

NORRIS, Circuit Judge:

These are three more in a series of Filipino war veteran cases arising under §§ 701-705 of the Nationality Act of 1940, Pub. L. No. 76-853, Ch. 199, 54 Stat. 1137, *as amended* by Pub. L. No. 77-507 § 1001, 56 Stat. 182 ("1940 Act"). Appellants are all Filipino veterans who served honorably in the United States armed services during World War II. They claim that they are entitled to United States citizenship under the 1940 Act because they were denied due process of law when the United States Attorney General removed an authorized naturalization officer from the Philippines in October 1945. They also contend that the government is collaterally estopped by the judgment in *Matter of Naturalization of 68 Filipino War Veterans*, 406 F. Supp. 931 (N.D. Cal. 1975) ("*68 Filipinos*") from relitigating their due process claims. The district courts denied all petitions. We reverse and grant the petitions.

I

A.

The history of this litigation is discussed at length in *Mendoza v. United States*, 672 F.2d 1320 (9th Cir. 1982) and *68 Filipinos*. We repeat it briefly here.

In March 1942, Congress amended the Nationality Act of 1940, Pub.L. No. 76-853, 54 Stat. 1137, to provide for naturalization of non-citizens who served honorably in the United States armed forces. 56 Stat. 182 (repealed 66 Stat. 280, June 27, 1952). As amended, the 1940 Act exempted alien servicemen from certain of the usual naturalization requirements, *id.* at § 701, and provided for overseas naturalization of servicemen on active duty. *Id.* at § 702. As further amended, the Act required that all petitions for naturalization under §§ 701 and 702 be filed by December 31, 1946. Act of Dec. 28, 1945, Pub.L. No. 79-270, § 202(c)(1), 59 Stat. 658 (repealed 66 Stat. 280, June 27, 1952).

In early August 1945, the Immigration and Naturalization Service (INS) designated George Ennis, Vice Consul in Manila, to naturalize Filipino servicemen under the 1940 Act. But when the Philippine government expressed concern that naturalizations under the Act would drain the country of much-needed manpower, the Attorney General revoked Vice Consul Ennis' naturalization authority. As a result, between October 1945 and August 1946, no INS official was present in the Philippines to naturalize eligible servicemen.

B.

In 1975, the claims of 68 Filipino war veterans, whose petitions for naturalization pursuant to the 1940 Act had been denied by the INS, were joined in district court. *Matter of Naturalization of 68 Filipino War Veterans*, 406 F. Supp. 931 (N.D. Cal. 1975) (Renfrew, J.). Judge Renfrew divided the petitioners into two relevant categories: those who had taken some action to be naturalized in the Philippines prior to December 31, 1946, but had not been processed by the INS (Category I), and those who had taken no action to be naturalized

in the Philippines (Category II)[1]. Judge Renfrew granted the petitions of "Category I" veterans on the alternate grounds that the government had engaged in "affirmative misconduct," which estopped it from contesting the veterans' petitions, and that the petitions had been "constructively filed" within the statutory deadline. *Id.* at 937-40. Judge Renfrew granted the petitions of "Category II" veterans on the ground that withdrawal of the naturalization examiner from the Philippines violated the equal protection component of the Due Process Clause of the Fifth Amendment. *Id.* at 951. The government filed a notice of appeal, but then withdrew it, permitting the judgment to become final.

II

A.

Appellant Pangilinan is one of fourteen Filipino veterans whose petitions were consolidated on appeal. We treat all fourteen as "Category II" veterans on the basis of a stipulation that their petitions raise issues identical to those raised by the "Category II" veterans in *68 Filipinos*. All served honorably in the United States armed forces; all were in the Philippines on active service for some or all of the time that naturalization authority was withdrawn; and none took steps to become naturalized while in the Philippines.

We also conclude that appellant Litonjua should be treated as a "Category II" veteran[2]. He enlisted in the

[1] A third category included Filipinos who could not prove that they had been eligible for naturalization under §§ 701-705.

[2] Although it did not raise the argument in its brief, the government asserted at oral argument that Litonjua is not a "Category II" veteran because he sought naturalization in Seattle after his discharge from the military. The argument is meritless. Litonjua was in the Philippines for six of the nine months that naturalization authority was withdrawn and, like the "Category II" veterans in *68 Filipinos*, he made no effort during that peri-

United States Navy in 1941 and became a prisoner of war in 1942. After his release in early 1945, Litonjua rejoined his unit in the Philippines, where he remained in active service until he was honorably discharged on April 10, 1946.[3] Thus, he was in the Philippines and eligible to be naturalized during a six month period (October 1945 to April 1946) when there was no INS official available to process his petition.

Because the theory of Barretto's claim differs from that of Pangilinan and Litonjua, we treat the status of his naturalization petition in Part III.

B.

Although Litonjua and the Pangilinan petitioners are "Category II" veterans, the district judges below declined to estop the government from relitigating the issues decided in *68 Filipinos*. Instead, they reached the merits of appellants' constitutional claims, and, relying on *Olegario v. United States*, 629 F.2d 204 (2d Cir. 1980), *cert. denied*, 450 U.S. 980 (1981), denied the veterans' petitions. In so doing, they acted without the benefit of our decision in *Mendoza v. United States*, 672 F.2d 1320 (9th Cir. 1982), in which we affirmed a district court judgment collaterally estopping the government on precisely these facts. Accordingly, the

---

od to be naturalized under § 702. *See Mendoza*, 672 F.2d at 1326 n.8.

[3] Shortly thereafter, Litonjua went to Seattle, Washington as a civilian employee of the United States Army Transport Service. While in Seattle, he took steps to become naturalized under the 1940 Act, but, for reasons that are not clear on the record, the petition process was not completed. Litonjua is not, however, a "Category I" veteran, because the "Category I" veterans in *68 Filipinos* sought naturalization under § 702 while still on active duty in the Philippines. Litonjua claims that he should nonetheless be deemed to have constructively filed his petition before the statutory deadline. Because we resolve his case on an alternate ground, we do not reach this issue.

threshold legal question in the Litonjua and Pangilinan appeals is the effect of our decision in *Mendoza* on the question whether the government should be precluded from relitigating issues decided in *68 Filipinos*[4].

The facts presented in *Mendoza* were similar to those at issue here. Dr. Mendoza, like Litonjua and the Pangilinan petitioners, qualified as a "Category II" veteran. He served in the United States armed forces from December 1, 1941 until June 30, 1946. During that time, he was captured by the Japanese and survived the Bataan Death March. Once released by the Japanese, he was sent to the United States for army medical training; six months later, he returned to the Philippines, where he remained for the duration of his service. At no point during that time—indeed, not until 1978—did he make any effort to become an American citizen. The district court, in granting Dr. Mendoza's petition for naturalization, applied the doctrine of collateral estoppel based upon the guidelines set out in *Parklane Hosiery v. Shore*, 439 U.S. 322 (1979), which encouraged use of collateral estoppel offensively when

[4] Because the relevant facts are not in dispute, this court is equipped to decide whether, in light of *Mendoza*, collateral estoppel should be invoked offensively against the government in the *Pangilinan* and *Litonjua* cases. See *Starker v. United States*, 602 F.2d 1341 (9th Cir. 1979). In *Starker*, as here, the district court declined to estop the government collaterally, but did so without the benefit of the Supreme Court's decision in *Parklane Hosiery v. Shore*, 439 U.S. 322 (1979). Rather than remand to the district court for reconsideration in light of *Parklane Hosiery*, our court made an independent determination to apply collateral estoppel against the government, reasoning that "we [could] discern no useful purpose in a remand for the exercise of the discretion called for in *Parklane Hosiery*. This court can apply to agreed facts the discretionary standards set out in that opinion." *Starker*, 602 F.2d at 1349. Similarly, no useful purpose would be served by a remand to determine on the basis of the agreed facts the legal effect of our decision in *Mendoza* on the Litonjua and Pangilinan petitions.

its application would not be unfair to the defendant.[5] We held that the district court did not abuse its discretion because the "dual purpose of protecting litigants from the burden of relitigating an identical issue ... and of promoting judicial economy by preventing needless litigation," *id.* at 326, would be served by barring the government from relitigating issues decided in *68 Filipinos*. *Mendoza*, 672 F.2d at 1325-26. We were unpersuaded by the government's argument that it would be unfair[6] to grant Dr. Mendoza's naturalization petition without reaching the merits of his equal protection claim.

To support its claim of unfairness, the government in *Mendoza* first asserted that it had prematurely withdrawn its appeal in *68 Filipinos* because it had grossly underestimated the number of Filipinos who would become eligible for naturalization under its holding. We found no record support, however, for the contention that, after withdrawing its appeal, the government discovered that as many as 60,000-80,000 Filipino veterans could be expected to petition for naturalization in reliance upon Judge Renfrew's decision in *68 Filipinos*. The government, for instance, did not indicate how many of those potential applicants had in fact petitioned after *68 Filipinos* was decided in 1975, or how many of those veterans actually eligible to petition were realis-

---

[5] The Court in *Parklane Hosiery* identified several potential sources of unfairness: if potential plaintiffs sit on the sidelines until another plaintiff has obtained a favorable judgment; if the second action involves substantially higher stakes than the first, or affords the defendant procedural opportunities not originally available; or if circumstances have changed by the time of the second suit. 439 U.S. at 330-31.

[6] The government did not contend that Dr. Mendoza had adopted a "wait and see" attitude to reap the fruits of the earlier litigation; we thus did not reach the issue whether application of collateral estoppel would have been inappropriate on that score.

tically likely to do so nearly 40 years after the end of World War II. In fact, the record suggested that only a very few Filipinos had taken advantage of the opportunity; congressional testimony by INS officials indicated that no more than 100 Filipinos had applied for naturalization as of 1978. 672 F.2d at 1327. In the cases now before us, the government has made no effort to challenge that testimony or otherwise bolster its claim of unfairness; in fact, at oral argument the government formally abandoned its contention that the issues in *68 Filipinos* should be relitigated because it had grossly miscalculated the impact of that decision on the number of naturalization petitions from Filipino war veterans it could expect to receive.

In *Mendoza*, we also rejected the government's argument that collateral estoppel should be invoked offensively only against private litigants. *Id.* at 1329. Acknowledging that relitigation by the government might be warranted in cases raising significant issues of public policy or consitutional law, we nonetheless found no compelling need for relitigation in that case.

The merits of these arguments were thus fully considered in *Mendoza*, and need not be reconsidered here. We now address the government's sole remaining argument[7] that giving collateral estoppel effect to *68 Filipinos* would insulate significant constitutional issues from appellate review. *See Montana v. United States*, 440 U.S. 147, 163 (1979) (cautioning that collateral estoppel should not be applied lightly where to do so might freeze constitutional doctrine on significant national issues); *Mendoza*, 672 F.2d at 1329-30. Although we readily agree that the constitutional issues raised in *68 Filipinos* are significant, we believe that

[7] As in *Mendoza*, the government does not suggest that Litonjua and the Pangilinan petitioners could have joined the *68 Filipinos* litigation and thus that they are unfairly profiting from its results.

the government overstates the precedential value of *68 Filipinos*, which is, after all, a district court opinion rendered on extraordinary facts. The events giving rise to the *68 Filipino* claims occurred over 35 years ago in the unusual context of a war-related immigration statute and the impending independence of the Philippines; it is highly improbable that the government will again be involved in litigation involving analogous facts. And if legal issues analogous to those resolved in *68 Filipinos* arise on different facts, the government would be free to relitigate them, *see Commissioner v. Sunnen*, 333 U.S. 591, 601-02 (1948); *Montana v. United States*, 440 U.S. at 162-63, burdened only by a district court opinion as related precendent.[8] Thus, application of collateral estoppel would not freeze constitutional doctrine on important national issues or otherwise inhibit healthy development of the law.

Absent a change in circumstances, which the government has neither claimed nor demonstrated, therefore, *Mendoza* must control the disposition of the *Pangilinan* and *Litonjua* appeals. We conclude that our determination in *Mendoza* that it is not unfair to estop the government from contesting the naturalization petitions of "Category II" veterans is binding in these cases as *stare decisis*. To permit district courts in the Ninth Circuit to redetermine the issue of fairness after our decision in *Mendoza*—and thus treat identically situated "Category II" veterans differently from Dr. Mendoza—would be abhorrent to the principles of consistency and fairness that underlie the doctrine of *stare decisis*, *see Thomas v. Washington Gas Light Co.*, 448

[8] Moreover, since the Second Circuit has declined to collaterally estop the government, and has disagreed with *68 Filipinos* on the merits, *Olegario v. United States*, 629 F.2d 204, 214-15, 130 (2d Cir. 1980), *cert. denied*, 450 U.S. 980 (1981), there is a conflict in the circuits, and courts addressing analogous legal issues on new facts will have the benefit of both opinions.

U.S. 261, 272 (1980), and would undermine "public faith in the judiciary as a source of impersonal and reasoned judgments." *Moragne* v. *States Marine Lines, Inc.* 398 U.S. 375, 403 (1970).

For the foregoing reasons, therefore, we hold that the government is collaterally estopped from relitigating against these "Category II" veterans the issues decided in *68 Filipinos*[9]. This result is consistent with the guidelines set out in *Parklane Hosiery*. Once it has been conclusively determined that collateral estoppel is not unfair to a defendant, and does not reward a plaintiff who could easily have joined the initial suit, we believe that, absent a change of circumstances, *Parklane Hosiery* requires its application as a matter of law. By deciding as we do, we thus adhere both to the standards set in that case and to the reasoning of our *Mendoza* decision.

III

We now turn to Appellant Barretto's petition. Barretto joined the United States armed forces in August 1941. He saw active duty in Central Luzon, Bataan and Corregidor and was imprisoned by the Japanese from May 1942 to November 1943. In February 1945, Barretto was assigned to flight training duty in the United States. While there, he tried to file a preliminary application for naturalization under the 1940 Act, but the INS would not accept his application because it lacked the signature of his commanding officer.[10]

---

[9] We do not hold that the trial judges, who ruled without the benefit of *Mendoza*, abused their discretion in denying collateral estoppel. Rather, we hold that, in light of *Mendoza*, the government is now estopped as a matter of law.

[10] Barretto was unable to obtain the signature because his commanding officer was in the Philippines. Barretto argues that the signature was required only on the filing of a formal petition and that the refusal to accept his preliminary application was

Barretto returned to the Philippines on June 10, 1946 and was discharged from the United States armed forces on June 30, 1946.

Barretto filed this petition for naturalization in June 1977, and the government withdrew its *68 Filipinos* appeal in November 1977. Because several Filipino veterans apparently agreed with the INS to hold their claims in abeyance pending the outcome of the appeal in *68 Filipinos*, the government has adopted a "grandfather" policy of granting any petitions filed by "Category II" veterans before withdrawal of the *68 Filipinos* appeal.[11] Brief of Respondent-Appellee at 13 n.21; Supplemental Brief of Respondent-Appellee at 2-6. *See, e.g., United States v. Domingo v. Avena*, No. ____ (N.D. Cal. Jan. 17, 1979), *appeal withdrawn*, No. 79-4361 (9th Cir. ____ 1979). At oral argument, the government stipulated that it would withdraw its opposition to Barretto's petition if this court finds that Barretto is a "Category II" veteran within the meaning of *68 Filipinos*.

The district court held that Barretto is not a "Category II" veteran because he was not prejudiced by the government's withdrawal of naturalization authority from the Philippines. The district court reasoned that Barretto was in the United States during much of the period that a naturalization officer was absent from the Philippines; that Barretto was stationed in the Philippines and eligible for naturalization under § 702 for only twenty days of that period; and that Barretto

---

"affirmative misconduct," and that the government is thus estopped from contesting his petition. Because we decide his case on an alternate ground, we do not reach this issue.

[11] The government has also adopted a policy of granting all petitions of "Category I" veterans, whether filed before or after withdrawal of the appeal in *68 Filipinos*. Brief of Respondent-Appellee at 13 n.21.

testified that he made no attempt to inquire about naturalization after he returned to the Philippines.

We cannot agree that Barretto is disqualified from relief because he was in the Philippines and eligible for naturalization under § 702 for only twenty days. In *Mendoza*, we found that Dr. Mendoza's presence in the Philippines for as much as three months, after having been in the United States for several months, was sufficient to implicate Dr. Mendoza's due process rights, 672 F.2d at 1326 n.8; we know of no principled basis—and the government offers none—for drawing a line between three months in Dr. Mendoza's case and three weeks in this case. If the government's conduct violated the constitutional rights of Filipinos serving in the United States armed forces in the Philippines, it violated their rights whether they were in the Philippines for nine months or nine days.

Nor do we agree that Barretto's failure to inquire about naturalization upon his return to the Philippines disqualifies him from relief as a "Category II" veteran. None of the "Category II" veterans in *68 Filipinos* had taken steps to be naturalized, and we see no reason to distinguish Barretto's inaction from theirs simply because Barretto knew of his right to naturalization under the 1940 Act.[12] Barretto has shown that he would have been eligible for naturalization in the Philippines if an INS officer had been present, and that he wished to avail himself of his right to naturalization. He has thus demonstrated "a 'distinct and palpable injury' . . . [and] a 'fairly traceable' causal connection between the

[12] The opinion in *68 Filipinos* does not indicate whether the "Category II" veterans did or did not know of their rights under §§701-705. In any event, the record does not show that Barretto knew there was a possibility of being naturalized while outside the United States. Thus, even if relevant, we could draw no negative inference from his failure to seek naturalization in the Philippines.

claimed injury and the challenged conduct," *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 72 (1978) (citations omitted), and he has standing as a "Category II" veteran to challenge the government's actions. Thus, pursuant to the government's "grandfather" policy and its stipulation in court, we hold that Barretto is legally entitled to be naturalized.

The judgments of the district courts are REVERSED and the naturalization petitions of all appellants in these consolidated appeals are GRANTED.